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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945—No. 1043

IN THE MATTER

OF

CHILDS COMPANY, Debtor.

IN PROCEEDINGS FOR REORGANIZATION UNDER CHAPTER X OF THE BANKRUPTCY ACT—No. 82868.

BURTON C. MEIGHAN, JR., as Substituted Trustee under the Last Will and Testament of William T. Wood, Deceased,

Petitioner,

against

JOHN F. X. FINN, as Trustee of CHILDS COMPANY,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit and Brief in Support of Petition

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IN THE

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OCTOBER TERM, 1945—No.

In the Matter

of

CHILDS COMPANY, Debtor,

In proceedings for Reorganization under Chapter X of the Bankruptcy Act.—No. 82868.

BURTON C. MEIGHAN, JR., as Substituted Trustee under the Last Will and Testament of William T. Wood, Deceased,

Petitioner,

against

JOHN F. X. FINN, as Trustee of CHILDS COMPANY,

Respondent.

Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit

Your petitioner, Burton C. Meighan, Jr., as Substituted Trustee under the Last Will and Testament of William T. Wood, Deceased, respectfully prays for a writ of certiorari to the Circuit Court of Appeals for the Second Circuit to review a decree of that Court entered in the above entitled proceeding on January 8th, 1946 (R. 55). Said decree affirmed an Order of the District Court for the

Southern District of New York, dated June 26, 1945 (R. 46), which extended until July 1, 1946 the time within which the debtor and its trustee were required to surrender to petitioner premises at 1553 Broadway, New York City, pursuant to a prior order of the District Court dated September 27, 1944 (R. 28) adjudging that the lease between petitioner's predecessor, as landlord, and the debtor, as tenant, had terminated on August 26, 1943. The extension of time as granted by the District Court and as sustained by the Circuit Court of Appeals was due to the enactment of Chapter 314 of the Laws of New York of 1945, effective March 28, 1945, and known hereafter as "Emergency Rent Control Law" (R. 41, 51).

Neither the opinion of the United States District Court for the Southern District of New York nor the opinion of the Circuit Court of Appeals for the Second Circuit has been reported.

Summary and Short Statement of Matter Involved

Childs Company, the debtor herein, is engaged in the business of operating a chain of restaurants. It has been the lessee of the entire premises at 1553 Broadway, New York City, for more than twenty years, operating a restaurant upon part of the said premises. The debtor subleases that portion of the premises not occupied by it in connection with the operation of the restaurant.

On July 31, 1922, the debtor entered into a lease with petitioner's predecessor for a period of twenty-one years from May 1, 1926 to April 30, 1947, which lease was subsequently modified in respects not pertinent here (R. 24). The said lease contained an automatic cancellation clause in the event the debtor filed a petition for bankruptcy or was adjudicated bankrupt or insolvent by any court (R. 25). On August 26, 1943, the debtor filed its petition in the Southern District for reorganization under Chapter X of the Bankruptcy Act. On the same date the petition

was approved and John F. X. Finn was appointed trustee of the debtor (R. 7).

On June 23, 1944, petitioner served a notice on the debtor and its trustees that the said lease had terminated and come to an end as of August 26, 1943. On the application of petitioner the District Court granted an Order dated September 27, 1944, directing the debtor to surrender the premises to petitioner within thirty (30) days from September 27th, 1944, which order was affirmed by the Circuit Court of Appeals for the Second Circuit on January 18, 1945 (R. 2, 3, 8). Pending the appeal execution of the District Court order was stayed (R. 3).

By order of the District Court, dated February 1, 1945, the time for surrender to petitioner of the premises at 1553 Broadway, New York City, was extended to February 26, 1945. Upon application of the debtor and its trustee this Court, on February 9, 1945, stayed the execution of the mandate of the Circuit Court of Appeals for the Second Circuit issued upon the affirmance of the District Court order of September 27, 1944, pending application for a writ of certiorari. Such writ was granted on March 5, 1945, and on May 21, 1945, this Court affirmed the decision of the Circuit Court of Appeals for the Second Circuit (R. 8, 37).

On May 23, 1945, the debtor's trustee petitioned the District Court for a further postponement to July 1, 1946, of the time within such surrender of premises at 1553 Broadway, New York City, was required on the ground that under the Emergency Rent Control Law, effective March 28, 1945, the debtor and its trustee had the right to remain in possession until the expiration of the emergency upon payment of the emergency rent which had been offered to and refused by this petitioner (R. 9, 10, 14-17 incl.). The District Court granted the petition (R. 46) and the order entered thereon was affirmed by the Circuit Court of Appeals for the Second Circuit on January 8, 1946 (R. 51, 55).

The Courts below have held that the Emergency Rent Control Law is applicable to a corporate reorganization under Chapter X of the Bankruptcy Act and requires the Bankruptcy Court to suspend the enforcement of final judgments entered by it in a corporate reorganization proceeding prior to the enactment of the State statute. The correctness of this determination presents an issue of law which is the sole question in this case. Petitioner contends that the issue involves an important question which has not been, but should be, settled by this court and further, that the Court below has decided the question in this case in a way probably in conflict with applicable decisions of this Court.

The relevant provisions of the Emergency Rent Control Law are as follows:—

> Section 2 (e): "'Tenant.' A lessee, sublessee, or other person entitled to the possession or to the use or occupancy of the whole or a part of any business space."
>
> Section 8: "So long as the tenant continues to pay the rent to which the landlord is entitled, under the provisions of this act, no tenant shall be removed from any business space, by action or proceeding to evict or to recover possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and notwithstanding the issuance of any order to dispossess, warrant or process prior to the effective date of this act, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which is inconsistent with any of the provisions of this act."

Reasons Relied Upon for the Granting of the Writ of Certiorari

(a) The decision of the Circuit Court of Appeals for the Second Circuit constitutes a dangerous precedent which would seriously impede the administration of corporate reorganizations under Chapter X of the Bankruptcy Act and thwart the very purpose of the statute in many instances.

(b) The decision of the Circuit Court of Appeals for the Second Circuit violates fundamental principles with respect to the exclusive and controlling jurisdiction of the Federal Courts regarding federally-created rights in connection with the administration of corporate reorganizations under Chapter X of the Bankruptcy Act.

WHEREFORE your petitioner prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Second Circuit to the end that this cause may be reviewed and determined by this Court; that the decree of the Circuit Court of Appeals for the Second Circuit be reversed; and that petitioner be granted such other and further relief as may be just and proper.

Dated: New York, April 1, 1946.

BURTON C. MEIGHAN, JR.,
Counsel for Petitioner.